**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL NO. 1051 OF 1987**
**With**
**CROSS OBJECTION NO. 49 OF 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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**GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)**
**Versus**
**JENATBIBI W/O IBRAHIMKHAN PATHAN & ORS. - Respondent(s)**

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**Appearance :**
Ms. Jyoti Mehta for Appellant(s).
Shri Girish D. Bhatt for Respondent(s) : 1 - 7.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 16/07/2007**

**ORAL JUDGMENT**

The Gujarat State Road Transport Corporation, being

aggrieved by the award dated 10th October, 1986 passed by the learned Motor Accident Claims Tribunal No.4 (Auxiliary), Court No.18, Ahmedabad in M.A.C.P. No.139 of 1984, is before this Court seeking reduction in the amount awarded in favour of the respondents-claimants, while respondent Nos.1 to 5 have filed the Cross Objections seeking enhancement in the awarded amount.

2. The appellants have confined their claim to Rs.50,000/- only, which would mean that they are not challenging the rash and negligent driving, accident, liability of the driver and the consequent liability of the Gujarat State Road Transport Corporation as master of the driver and owner of the bus.

3. Ms. Jyoti Mehta, learned Counsel for the appellants, submitted that the learned Tribunal below was unjustified in making the award in favour of Claimants Nos.2 to 5, who are brothers of the deceased. According to her, a minor brother may sometimes claim the compensation, but, only upto the age of majority and not beyond that. According to her, the claimants, for the reasons best known to them, have not brought the correct age of the claimants on record.

4. Shri Girish Bhatt, learned Counsel for the claimants, on the other hand, submitted that it has come on the records that at least two

brothers of the deceased were minor and were dependent upon the deceased.

5. In absence of any evidence on record that four brothers were dependent upon the deceased and the deceased was looking after them, it may not be possible for this Court to hold in favour of Claimant Nos.2 to 4, especially, when it has not come on record that those Claimants Nos.2 to 4 were minor and they were totally dependent upon the deceased.

6. A death should not become a windfall for every member of the family, but, the Court is required to see that what should be the dependency figure and what should be the proper multiplier.

7. In the present case, the learned Tribunal, without appreciating the legal aspects of the matter, has held that each of the claimants would be entitled to 1/5$^{th}$ from the calculated future loss of income.

8. In the opinion of this Court, the learned Tribunal below was unjustified in making the award in the sum of Rs.1,14,750/-. As the appellants have confined the challenge to Rs.50,000/- only, a sum of Rs.50,000/- only is to be deducted from the amount awarded in favour

of the claimants. The claimants would be entitled to a sum of Rs.64,750/- only. The award made by the learned Tribunal below is accordingly modified to the extent indicated above. The appeal is allowed. However, the Cross Objections are dismissed. No costs.

***[R.S.Garg, J.]***

*kamlesh**